



Know your RIGHTS

Like it or not, there will be times when using your computer gets you into a spot of bother and you won't know where you stand. **Andrew Wand** can give you the legal perspective to put things straight

CAN THEY CHARGE A CANCELLATION FEE?

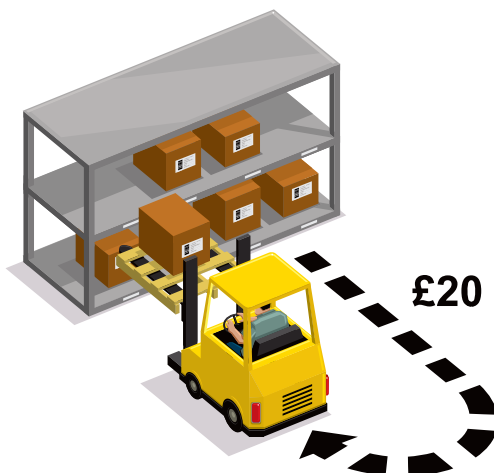
Q My employers asked me to take a four-week posting abroad on a new project and I thought I would treat myself to a new notebook to take with me. I bought an off-the-shelf laptop from an online retailer. It was a standard model and I didn't ask for any upgrades or modifications when I placed my order.

By coincidence, after I had completed the order I got an email from my personnel department informing me that I would be getting a new company laptop. I made a few internal calls to check the specification of the company laptop and as it was much better than the one I had bought I immediately phoned the retailer to cancel my order. This was probably about four hours after I had made the purchase. I was told that my purchase would be cancelled and a refund provided. I thought that would be the end of it.

I have just received my credit card statement and found that the cost of the laptop was debited and then re-credited to my credit card less £20. I phoned the retailer's customer services department and was informed that it was a standard cancellation, return, testing and restocking charge. I doubt that the laptop even

made it off the retailer's shelf and don't see why I should pay a surcharge. Can I get my money back?

A The contract you entered into online will be deemed a "distance contract" in accordance with the Consumer Protection (Distance Selling) Regulations 2000 (as amended on 6th April 2005). As such you are afforded a number of rights including the right to specific information (Regulations 7 and 8) and the right to cancel within seven working days of the conclusion of the contract (Regulations 10 and 11).



The information that must be provided to you includes the conditions and procedures for exercising the right to cancel. These include whether it's the consumer's responsibility to return unwanted goods to the supplier and to cover any shipping or restocking costs.

You should check the terms and conditions on the retailer's website together with any other written notifications you've received in the course of the transaction to see whether or not you are responsible for the cost of returning the goods to the retailer in the event of cancellation.

Regulation 14 goes on to deal with refunds and any charges that the retailer may make. Essentially, the retailer may make a charge not exceeding the direct costs of recovering any goods supplied under the contract. There is an added layer of consumer protection under Regulation 14(6)(b). This states that the retailer's terms and conditions that require the consumer to return goods supplied in the event of cancellation must not be "unfair" within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999. This is to stop retailers levying punitive charges for the return of goods or seeking to make a profit on cancelled contracts.

In your particular circumstances, while the retailer accepted your telephone cancellation of the contract within a relatively short period of time, if the retailer's terms and conditions of business clearly spell out the applicable cancellation and



return charges then £20 would neither seem to be unfair or over the retailer's direct costs of recovering the goods.

You could try writing to the retailer's customer service department to seek a refund, or you could even dispute the charge with your credit card company. However, bear in mind that even if the notebook didn't leave the warehouse the company still has to cover the administrative costs of accepting and cancelling an order. Unless it charges something for this, the cost of dealing with returned goods will be passed back to consumers through higher prices.

CAN I SELL GOODS OF QUESTIONABLE ORIGIN?

Q I recently bought a second-hand PC from the free ads section of my local paper. The PC was of a very high specification and the price was ridiculously low. I phoned the seller on his mobile and we arranged to meet at a local service station that was convenient to both of us. I couldn't test the PC but the seller promised me that it was "as new" and that he had a batch of PCs just like it. I was able to take the case off and look inside. The price was much less than the component parts of the PC so I took a risk and bought it for cash.

When I got the PC home it worked fine, was full of preloaded software and still had the previous owner's data in the recycle bin. I was thinking about buying some more of these PCs and selling them to people I know but I don't want to give any guarantee or take any responsibility for where they came from. How do I do this?

A I would guess that the PCs are stolen and I suspect that you know this too or you wouldn't be asking the question. No reputable supplier is likely to conduct business at a petrol station in cash. If the PCs are stolen, you cannot acquire "good title" to them and so you can't legally own or sell them. More to the point, if you do you may be committing a criminal offence. Section 22 of the Theft Act 1968 deals with the offence of "handling stolen goods" and states:

(1) A person handles stolen goods if (otherwise than in the course of his stealing) knowing or believing them to be stolen goods he dishonestly

receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so.

(2) A person guilty of handling stolen goods shall on conviction on indictment be liable to imprisonment for a term not exceeding fourteen years.

The key to the test is in either "knowing or believing" that the goods are stolen, as mere suspicion is not enough. The test is summarised by the statement, "I cannot say I know for certain that these goods are stolen, but there can be no other reasonable conclusion in the light of all that I have heard and seen". Additional relevant factors include no receipts, low price, identification marks having been removed, no explanation as to the source, receiving goods at unusual times or in unusual places and receiving goods several times from the same supplier. You could ask to meet the seller at his place of business and ask for a receipt as this ought to indicate whether there is likely to be a problem. Alternatively, you could contact the previous owner of the PC if you can ascertain his or her identity from the contents of the recycle bin.

The penalties for being convicted of handling stolen goods are harsher than the penalties for being convicted of theft. The penalty for handling stolen goods is a maximum prison sentence of 14 years, whereas the penalty for theft is a maximum prison sentence of seven years. The view taken by the legislature is that theft is controlled by the economic principles of supply and demand and if there were no demand for stolen goods then there would be no theft.

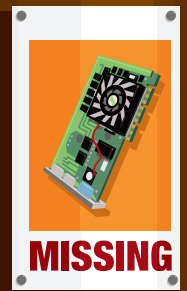
If you are planning to sell on the PCs for profit as a commercial enterprise, then it is likely that you will be subject to the UK consumer protection legislation and in particular the Sale of Goods Act 1979 (as amended). However, it would be sensible to take a proper look at the Theft Act 1968 before you do anything.

WHY WAS MY GRAPHICS CARD CHANGED?

Q I bought a family PC with an AMD Athlon XP 2600+ processor, 512MB of PC2700 RAM and a GeForce4 Ti4200 graphics card. The PC's power supply and motherboard failed shortly after a thunderstorm, and I took it to a local independent PC centre for repair. It was repaired after a long wait, and when I got it back I found it had a GeForce4 MX440 graphics card installed. When I collected the PC there was no mention that the graphics card had been found to be faulty or needed to be replaced. The cost of fixing my PC was reasonable but I am concerned that functioning components have been replaced for lesser components. What should I do?

A It's possible that the graphics card had failed and was replaced by the shop. You should check your invoice to see what components were changed and how much you were charged for the job. If this is not on the invoice you should ask the shop for a full breakdown or a copy of the job card for the work carried out.

Alternatively, you may find that it is an accidental mix-up in the process of repairing your PC. It could be that your graphics card was



removed, put down on a workbench and then a different graphics card accidentally picked up and put back into your PC. You should go to the shop in person and speak to the manager and tell him what has happened if only to gauge his reaction and the level of organisation within the shop.

If your concerns are not addressed properly you should contact your local Trading Standards department (www.tradingstandards.gov.uk) to see if any other complaints of a similar nature have been made against the shop. Ascertaining this will be important should you wish to take the matter further in the Small Claims Court. Any legal claim will turn on evidence, and evidence from Trading Standards of previous complaints would be extremely useful.

To bring a claim you will need the purchase invoice for the PC specifying that the original GeForce4 Ti4200 was supplied with your PC. You will also need something to show the current specification of the PC and the installed GeForce4 MX440 graphics card. Belarc's Advisor is a very useful tool for personal PC auditing – see www.belarc.com/free_download.html#faq.

Ideally you should obtain a short report from an independent PC engineer to see if there are any hardware or Registry logs that can confirm that a new graphics card was installed and, if so, when. However, the cost of an engineer's report is likely to be prohibitive and will probably exceed the value of any claim you may have against the shop. It is also questionable whether you would recover the full cost of the engineer's report in the event that you were successful because there is a limited ability to recover litigation costs in the Small Claims Court. Visit the shop first, as you may be able to sort everything out there. ☐

CONTACT

If you have any computer-related legal queries that you would like to see covered in a future issue, please email us at

legal@computershopper.co.uk

The views expressed within this article are those of the author. You are advised that this article is for guidance purposes only and does not constitute legal advice. Please note that we are unable to enter into any personal correspondence.

ABOUT THE AUTHOR

Andrew Wand is a solicitor at Mullis & Peake

